* **HIGH COURT OF DELHI : NEW DELHI**

\+ **W.P(C) No.6070 OF 2006**

% Judgment reserved on: September 17, 2007
Judgment delivered on: October 5, 2007

Shri Lakhi Ram ..... Petitioner
Through: Ms. Meenu Maini, Advocate

versus

Union of India & Others ..... Respondent
Through: Mr. J. K. Singh, Advocate

CORAM
HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.

*

1. The petitioner was appointed as casual substitute bunglow khalasi on 10.3.2003 and was performing the work of peon/telephone attendant. He acquired temporary status on 5.7.2003. The temporary status was extended for a further period of three months, as the

working of the petitioner was not found to be satisfactory. He was orally warned to improve his working style. A complaint of indecent behaviour was also reported on account of which a memo dated 25.8.2004 was served upon the petitioner to improve his working and behaviour. He was also warned that disciplinary action would be initiated against him in case he did not improve his working and behaviour. On 27.1.2005 a final opportunity was given to him to improve behaviour and work since there was no improvement despite earlier notice. He was warned that if his behaviour and work does not improve, action would be taken to terminate his services. Eventually by order dated 14.2.2005 the services of the petitioner were terminated by giving him one month's notice on the ground that his work and behaviour were not found to be satisfactory despite repeated oral warnings and warnings in writing dated 10.5.2004, 25.8.2004 and 27.1.2005.

2. The petitioner filed OA No.450/2005 before Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) under Section 19 of the Administrative Tribunals Act to challenge his termination on the ground that it was stigmatic and punitive and it was not preceded by an enquiry. It was contended that the termination notice made reference to an earlier letters, inter alia, dated 25.8.2004 and 27.1.2005 where indecent misbehaviour/misbehaviour, which is a

misconduct, was alleged against the petitioner. He contended that without following the due process of law and holding an enquiry his services could not be terminated. The Tribunal by its impugned order dated 11.4.2005 dismissed the original application. The petitioner preferred Review Application being RA No.124/2005 to challenge the aforesaid order, which has also been dismissed by the Tribunal on 1.6.2005.

3. Against the order of dismissal of his OA dated 11.4.2005 and the dismissal of his RA dated 1.6.2005, the petitioner has filed the present writ petition under Article 226 of the Constitution of India.

4. The order of termination dated 14.2.2005, as translated, reads as follows:

> "Subject: Substitute bungalow Khalasi- Regarding termination from service.
>
> You were appointed as bungalow khalasi temporarily for 3 months to work with Sh. Sanjay Goyal, Dy.CME II in terms of this office letter No.COFMOW/IR/P-172/Part II dated 10.03.2003. Thereafter your appointment extended by 3 months from 07.06.2003 to work as temporary Bungalow Khalasi with the condition that your services can be terminated earlier also if your work is not found to be satisfactory or your services are not required.
>
> Now your work and behavior as Bungalow Khalasi has not been found satisfactory. Despite oral and written warnings dated 10.5.2004, 25.8.2004 and 27.1.2005 in this regard there has been no improvement in your work and behavior. Consequently, your services as bunglow Khalasi are dispensed with effect from 14.3.2005 by giving one

month's notice. “

5. The petitioner emphasises that the accusation of misbehaviour in the said termination notice, and also the statement contained therein that despite verbal and written warnings there is no improvement in the work and behaviour are stigmatic. The petitioner argues that the order of termination cannot be treated as termination simplicitor but is accompanied by a stigma which suggests that the behaviour of the petitioner was objectionable and unacceptable. The petitioner contends that such accusations in the termination order would, for all times, prejudice the petitioner, inasmuch as, his chances in future of getting employment either with the respondent, or in any other organisation would be marred when such a termination order comes into the hands of his prospective employer. The termination, it is argued is, therefore, punitive and it ought to have been preceded by a departmental enquiry. The Petitioner complains that he has been condemned unheard. He submits that his termination is illegal and in violation of the principles of natural justice.

6. He also relies on a recent decision of this Court in WP(C) No.18407/2006 ***Union of India v. Shri Vijay Kumar*** dated 7.8.2007 and another decision in WP(C) No.3263/2006 dated 8.3.2006 ***Union of India v. Dharamender Kumar Yadav & Ors***. in support of his contentions.

7. From the impugned order of the Tribunal dismissing the Original Application, we find that the Tribunal has dismissed the same by placing reliance on a Full Bench decision of the Tribunal itself in ***Shyam Sunder v. Union of India,*** OA No.896/1995 dated 12.2.1999. As per the impugned order of the Tribunal, in ***Shyam Sunder*** (supra) the Tribunal has held that services of a Bunglow Khallasi even after grant of temporary status, can be terminated on unsatisfactory work without holding a departmental enquiry. The reasons of the Tribunal for passing the impugned order are contained in paragraph 17 and it reads as follows:-

> "It is permissible for the respondents, in the light of decision in the case of Shyam Sunder, which is binding on me, to dispense with the services of a Bungalow Khallasi even on acquirement of temporary status. If it is founded unsatisfactory performance in terms of conditions of appointment and in that even holding of enquiry or an opportunity is not obligatory. Moreover, even allegations of misbehaviour, to which the respondents have not decided to enquire into and no enquiry thereafter has been held, cannot be a foundation of the order. However, due to otherwise unsatisfactory performance, the reference to such incident is only a motive. The aforesaid mention of the warning where this alleged misbehavior is a part would not convert the order into an order of penalty a punitive one. From the reading of the order as well as the annexures referred to, I do not find the order as stigmatic one and reading of the written warnings clearly shows the unsatisfactory performance of the applicant. In that event no reasonable opportunity to show cause is necessary despite accord of sufficient opportunity to improve upon his working. As the applicant has failed to

> improve his work and conduct and his work and conduct remained unsatisfactory, it was within the right of the Railway authorities to have dispensed with his services on the basis of condition precedent and terms of conditions in his appointment as Bungalow Khallasi."

8. It is not in dispute that upon the grant of temporary status the petitioner acquired the right of being dealt with under the Discipline and Appeal Rules of the Railways. Therefore, if it is held that the order of termination is stigmatic and therefore punitive, and not one of termination simplicitor, it would follow that the order of termination is bad since, admittedly, no departmental enquiry has preceded the passing of the said order of termination. It would also be in violation of the principles of natural justice.

9. From the order of termination passed in the present case it is apparent that the respondent did accuse the petitioner of not only unsatisfactory work but also unsatisfactory behaviour. Accusation also is that there was no improvement in the work and behaviour of the petitioner despite verbal and written warnings given on various occasions on 10.5.2004, 25.8.2004 and 27.1.2005. Two of these warnings have been placed on record and they are issued in Hindi in Devanagiri script and the petitioner has filed English translations of the same. On perusal of the termination order and the warning letters in the language in which they were passed, it transpires that the translations are not accurate and therefore do not give a true and

complete picture. We have, therefore, relied on the actual language used in the order and the other communications.

10. Before dealing with the language of the order and the preceding communications referred to therein, it may be useful to first examine the meaning of the term `stigma' or `stigmatic' as judicially determined. In ***Kamal Kishore Lakshman V Management of M/s. Pan American World Airways Inc & Ors,*** (1987) 1 SCC 146, the Supreme Court accepted the dictionary meaning of the term `stigma' and noted:-

> "7.....In the absence of a statutory definition of the word `stigma', we shall refer to its meaning as available in dictionaries.
>
> 8. According to Webster's *New World Dictionary* it is something that detracts from the character or reputation of a person, a mark, sign, etc, indicating that something is not considered normal or standard. The *Legal Thesuras* by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's *Third new International Dictionary* gives the meaning as a mark or lable indicating a deviation from a norm. According to yet another dictionary `stigma' is a matter for moral reproach."

11. While approving the above definition the Supreme Court in ***Allahabad bank Officers' Assn. V. Allahabad Bank***,(1996) 4 SCC 504 observed that "*if the order of compulsory retirement casts a stigma on the government servant in the sense that it contains a*

statement casting aspersion on his conduct or character, then the court will treat the order as an order of punishment" and Article 311(2) of the Constitution would come into play. It further observed that in order to judge whether the statement in the order is stigmatic or not "*the test of how a reasonable person would read or understand it*" would apply. In ***Pavanendra Narayan Verma V. Sanjay Gandhi PGI of Medical Sciences,*** (2002) 1 SCC 520, it was observed that in order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job. Thus, firstly the "form" of the order has to be looked into and it is only when the order survives this examination, the "substance" of the termination has to be found out. Thus, where an order is at the face of it "stigmatic" no further enquiry is required.

12. Reverting now to the order of termination and the preceding communications referred to therein, it is clear that it refers not just to the "work" but also to the "behaviour" of the petitioner, and these two terms have not been used interchangeably. The order specifically refers to the three written warnings issued to the petitioner on 10.5.2004, 25.8.2004 and 27.1.2005. Therefore, in our view, these warning letters are an integral part of the termination order. (See para 35 of JT 1999 (1) SC 396) A perusal of the written warning dated 24.8.2004 reveals that the said warning pertained to

"a*santoshjanak karya" i.e.* unsatisfactory work and "*abhadra vyavhara"* i.e. indecent behaviour. The said letter also warns the petitioner that in case he failed to mend his ways, "*anushasnatmak karyavahi"* i.e. disciplinary action would be initiated against him.

13. The written warning dated 27.1.2005 which is a sequel to the previous letter, is the last and final warning in reference to the petitioner's work and behaviour and has to be read in the light of the previous letter. It warns that action for removal from service would be initiated against him.

14. The impugned order of termination is thus necessarily founded upon these letters and the reference to misbehaviour of the petitioner is but a reference to his so called "indecent behaviour" referred in the previous letters. "Indecent behaviour" or "misbehaviour" is definitely not in relation to his work, or performance related to work, and casts aspersion on his conduct, character and personality.

15. Whether a termination order is stigmatic or not has to be viewed from the point of view as to whether it has the effect of showing the employee in poor light in the eyes of a reasonable man, which would include a reasonable prospective employer. When the order dated 14.2.2005 would come into the hands of any prospective employer, the same would prejudice the chances of the petitioner to

gain employment since he has been branded as being a person who misbehaves and displays indecent behaviour. No employer would, while making his selection like to take in employment a person who has been certified as being one whose behaviour is not acceptable, and who has failed to improve his behaviour despite repeated warnings. This, in our view, is clearly stigmatic since the accusation against the petitioner is that not only his work but also his behaviour is unacceptable and is such that it calls for termination of his services. We, therefore, do not agree with the findings of the Tribunal that the accusation of misbehaviour against the petitioner is not stigmatic.

16. The decision rendered by this Court in WP(C) No.18407/2006 is squarely applicable in the facts of the present case. That case also pertains to a Bunglow Khallasi whose services had been terminated after he acquired temporary status. In that case the termination notice accused the employee, inter alia, of remaining absent from duty without intimation. The relevant extract from the aforesaid decision is to the following effect:

> "No doubt, if a person is holding temporary status or is a temporary employee, his service can be dispensed with by passing an order of discharge simplicitor under Rule 5(1) CCS Temporary Service Rule. In case the Respondent's conduct was not satisfactory, this rule could have been invoked. However, a perusal of the impugned order shows that it is stigmatic

in nature, inasmuch as, allegations have been leveled against the Respondent that his working report was found unsatisfactory, he was not able to perform his duties, he remained unauthorized absent from duty, and was found unsuitable.
The Railway Board has itself issued instructions, which are contained in letter No.803E/I/Pt.X/EIV, issued in January 1995, which are to the following effect:

"ii) Person who has attained temporary status cannot be discharged from service without applying full procedure as described in the D & A Rules. The grant of ty. Status to Bungalow peons before 2 years service will create problems for the officer in case Bungalow Peon indulge in unwarranted activities. No officer will allow his family members to be dragged,in official D & A enquiring etc. Thus, condition of two years service for grant of ty. Status to Bungalow Khallasi is a must.

Iii. The above conditions are not included in the IREC or IREM as Bungalow peons is a special category as they are neither casual labour nor substitute. Their service conditions, until they attain Ty. Status after completion of two years continuous service, are governed by the administrative orders issued from time to time with the approval of competent authority on Zonal Railways."

(underlining supplied)

Thus, in a case like this, as per the aforesaid instructions, procedure as contained in Disciplinary and Appeal Rules was required to be followed. In another

> case which arose in similar circumstances, a Division Bench of this court upheld the order of the Central Administrative Tribunal vide judgment dated 8th March 2006, titled as UOI s. Dharmender Kumar Yadav, in W.P. (C) No. 3263/2006 and C.M. No. 2828-29/2006."

17. The termination order dated 14.2.2005 therefore could not have been issued without affording an opportunity to the petitioner to meet the accusations of indecent behavior/misbehavour in a departmental enquiry. In fact, the respondents had themselves, at one stage, warned the petitioner that they would initiate disciplinary action against him. However, instead of resorting to the same, they adopted the short cut method of terminating his services by issuing the impugned order of termination, which is illegal.

18. In view of the above, we allow the present petition and quash the orders of the Tribunal passed in OA and RA. However, considering the fact that the petitioner has not worked from 14.3.2005 onwards, we are not inclined to grant any backwages to the petitioner. He shall, however, be granted continuity of service for purposes of seniority and pension. The respondents should pass appropriate orders of posting of the petitioner within two weeks from today. Parties are left to bear their respective costs.

(VIPIN SANGHI)
JUDGE

(A.K. SIKRI)
JUDGE

October 5, 2007
aj